

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

CRP.No. 957 of 2002()

AA.236/2000 of A.A.(LR),THRISSUR
OA.9/1985 of LAND TRIBUNAL, TIRUR
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REVN. PETITIONER/RESPONDENT/RESPONDENT:

1. VALIYAKATH SAIDUTTY MASTER,
S/O. MOHAMMED, P.O. TRIPRANGODE,
(TIRUR - MALAPPURAM DISTRICT). (DIED)

***ADDL. PETITIONERS 2 TO 7 IMPEADED:**

2. JAMEELA, W/O.VALIYAKATHU SADUKUTTY MASTER,
KUTTAMACKAL, TRIPRANGOD P.O., TIRUR.
3. SALIM SHAH, S/O.SAIDUKUTTY MASTER, DO.
4. SHYMA, D/O. DO. DO.
5. SABEER, SO. DO. DO.
6. FIRDOUS, S/O. DO. DO.
7. SHAMZEER, S/O.DO. DO.

*ADDL. PETITIONERS 2 TO 7 ARE IMPEADED AS LEGAL HEIRS OF THE
DECEASED REVISION PETITIONER VIDE ORDER DT. 12.2.2007 IN
I.A.353/07.

BY ADV. SRI.K.RAMACHANDRAN

RESPONDENTS/APPELLANTS/PETITIONERS:

1. CHEROTTIL PATHUMMA, D/O. YAHIN AND
W/O. PUTHEN PEEDIYIKKAL ABDUL KHADER,
P.O. TRIPRANGODE, TIRUR TALUK, MALAPPURAM DISTRICT.

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2. KUNHEEDU (MINOR) S/O. CHEROTTIL PATHUMMA
REPRESENTED BY GUARDIAN AND MOTHER CHEROTTIL
PATHUMMA, DO. DO.

3. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

R1-R2 BY ADV. SRI.T.KRISHNAN UNNI
R3 BY GOVT. PLEADER MR.THOMAS JOHN AMBOOKAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CMP NO.2505/02 AND I.A.NO.1100/05 IN C.R.P.NO.957 OF 2002

DISMISSED.

28.6.2007

SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

C.R.P. No.957 of 2002

Dated: 28th June, 2007

ORDER

The respondent, the land owner before the Land Reforms Appellate Authority, Thrissur is aggrieved by the order passed by the Appellate Authority allowing the appeal preferred by the respondents, alleged kudikidappukars by way of remand to the Land Tribunal. The case of the respondent in the O.A. which they filed under Section 80B of the Land Reforms Act is that the land owner Kadeeja Umma had permitted Abdul Kader, the husband of the 1st respondent and father of the 2nd respondent to occupy the land and that he started occupying the land after constructing a hut. The contention of the revision petitioners was that the alleged entrustment to Abdul Kader is false and that the respondents are not kudikidappurkars. According to them it was one Athiumma who was residing in the property and she had already filed O.A.No.159/73 before the Land Tribunal and obtained purchase certificate in lieu of kudikidappu rights for five cents as per the order in the O.A. The legal heirs of Athumma thereafter sold their rights in the property to the revision petitioners under registered sale deed. Nobody else was having kudikidappu rights on the property. It was also contended that Athumma had a

second wife by name Ummini Umma who also died. The legal heirs of Ummini Umma are necessary parties and they have been deliberately not impleaded in the O.A. The Land Tribunal on an evaluation of the evidence which is adduced by the parties accepted the case of the revision petitioner and dismissed the O.A. The Appellate Authority has under the order which is impugned in this revision petition, however, set aside the order of the Land Tribunal and remanded the case back to the Land Tribunal for a fresh decision.

2. I have heard the submissions of Mr.K.Ramachandran, learned counsel for the petitioners and those of Mr.T.Krishnanunni, learned counsel for respondents 1 and 2.

3. Mr.Ramachandran submitted that the Land Reforms Appellate Authority was not at all justified in accepting the report of the Revenue Inspector which were rightly rejected by the Land Tribunal on the basis of legal evidence. The judgment of this court in **Abbas v. Taluk Land Board** (1987 (2) KLT 533) was not relied on by the Land Tribunal. It was relied on by the Appellate Authority which did not notice that the above decision was overruled by the Division Bench of this court in **Jayasree v. State of Kerala** (1990(2) KLT 294). Mr.Ramachandran submitted that no reasons have been

stated by the Appellate Authority as to why the Authorised Officer's report (report of the Revenue Inspector) is acceptable and as to why the reasons stated by the Tribunal against the acceptance of that report are bad. The Land Tribunal which had the occasion to record the evidence of the 1st respondent had found that her versions were contradictory and inconsistent. The learned counsel further submitted that the argument regarding non-joinder of necessary parties was not even considered by the Appellate Authority.

4. Mr.T.Krishnanunni, counsel for respondents 1 and 2 refuting the submissions of Mr.K.Ramachandran would support the Appellate Authority's order.

5. Having considered the rival submissions, I am of the view that there still is some confusion regarding the identity of the property kudikidappus covered by the present O.A. and the previous O.A.. That being so, I do not propose to interfere with the order of remand presently passed by the Appellate Authority. The same, according to me, is liable to be modified so as to direct the Land Tribunal to hear the legal heirs of Athiumma also and also to ensure that cogent evidence is adduced by the respondents regarding the identity of the kudikidappu. Accordingly, the C.R.P. will stand

disposed of issuing the following directions:

The order of the Appellate Authority remanding the case to the Land Tribunal for fresh decision is approved. The revision petitioners are directed to file a statement before the Land Tribunal upon their appearance giving the names and addresses of the legal heirs of late Athiumma to whom the Tribunal will issue notice. Respondents 1 and 2 will file an application for issuance of a commission before the Land Tribunal and facilitate a report before the Tribunal regarding the identity of the kudikidappu which is subject matter of the present O.A. and the previous O.A. and also regarding the cost of construction of the building occupied by respondents 1 and 2 at the time of construction and its probable rental value at the relevant time. The Land Tribunal will dispose of the O.A. at its earliest and at any rate within six months of receiving copy of this order.

srd

PIUS C.KURIAKOSE, JUDGE